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automatically renewed by a savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section.

(7) *Eligibility requirements.* A savings association that issues or has outstanding repurchase agreements issued pursuant to paragraph (b) of this section shall calculate its total capital on a monthly basis in accordance with part 567 of this chapter. A savings association that does not have total capital equal to the sum of one percent of all liabilities of the savings association, plus an amount equal to 20 percent of the savings association's assets classified under § 563.160 of this part, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements:

(i) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, the savings association shall file with the OTS pursuant to § 516.1 of this chapter and shall continue to file thereafter on a current basis for as long as the regulatory capital deficiency shall exist, the following:

(A) Three copies of an opinion of independent legal counsel that the interest of repurchase agreement purchasers in the security or securities underlying the repurchase agreements constitutes a perfected security interest under applicable state law; and

(B) The offering document required under paragraph (b)(5) of this section.

(ii) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, and thereafter on a date certain in each succeeding week of the original or renewed term of the repurchase agreement for as long as the regulatory capital deficiency shall exist, the market value of the savings association's security or securities underlying a repurchase agreement shall be at least equal to 105 percent of the principal amount of the issuing savings association's repurchase agreement obligation, plus accrued interest.

(iii) A savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section shall not renew an outstanding repurchase agreement unless it provides the pur-

chaser with the disclosure document required under paragraph (b)(5) of this section and the purchaser thereafter affirmatively elects to renew the repurchase agreement.

[54 FR 49552, Nov. 30, 1989, as amended at 57 FR 33438, July 29, 1992; 59 FR 66159, Dec. 23, 1994]

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Subpart D [Reserved]

Subpart E—Capital Distributions

SOURCE: 64 FR 2809, Jan. 19, 1999, unless otherwise noted.

§ 563.140 What does this subpart cover?

This subpart applies to all capital distributions by a savings association ("you").

§ 563.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OTS determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate's acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

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(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in §565.4(b)(1) of this chapter, following the distribution; and

(e) Any transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital.

§ 563.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means an affiliate, as defined under §563.41(b) of this part.

Capital means total capital, as defined under §567.5(c) of this chapter.

Net income means your net income computed in accordance with generally accepted accounting principles.

Retained net income means your net income for a specified period less total

capital distributions declared in that period.

Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

§ 563.143 Must I file with the OTS?

Whether and what you must file with the OTS depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under §516.3(a) of this chapter.	Must file an application with the OTS.
(2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years.	Must file an application with the OTS.
(3) You would not be at least adequately capitalized, as set forth in §565.4(b)(2) of this chapter, following the distribution.	Must file an application with the OTS.
(4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OTS (or the Corporation), or violate a condition imposed on you in an OTS-approved application or notice.	Must file an application with the OTS.

(b) *Notice required.*

If you are not required to file an application under paragraph (a) of this section, but:	Then you:
(1) You would not be well capitalized, as set forth under §565.4(b)(1), following the distribution.	Must file a notice with the OTS.
(2) Your proposed capital distribution would reduce the amount of or retire any part of your common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under part 567 of this chapter (other than regular payments required under a debt instrument approved under §563.81).	Must file a notice with the OTS.
(3) You are a subsidiary of a savings and loan holding company.	Must file a notice with the OTS.